

**BOARD OF WATER ENGINEERS—CONTINUATION—  
COMPOSITION****CHAPTER 357**

H. B. No. 452

An Act amending Article 7477, Chapter 1 of Title 128 of the Revised Civil Statutes of Texas, 1925; continuing the Board of Water Engineers as created and constituted by Acts of the Thirty-third Legislature, Chapter 171, General Laws, approved April 9, 1913; providing that members constituting said Board shall continue in office for the respective terms for which they were appointed and until their successors are appointed and qualified; providing that said Board shall be composed of three (3) members appointed by the Governor by and with the advice and consent of the Senate; prescribing the term of office and qualifications of members; prescribing that each member shall take official oath as prescribed by law and execute bond in sum of Five Thousand Dollars (\$5,000) to be approved by the Governor and providing for the payment of premiums on said bonds; providing that the Governor shall designate the Chairman of the Board who shall be the Chief Administrative Officer thereof and prescribing the salaries to be paid members; providing for the appointment, qualifications, and salary of a Chief Engineer, and prescribing his duties; providing for the appointment of a Secretary, prescribing the duties and salary of the Secretary; providing that the Secretary shall be custodian of all files and records of the Board; requiring Secretary to execute bond in the sum of Ten Thousand Dollars (\$10,000) to be approved by the Board and payable to it; providing for the payment of premium on said bond; providing for regular and special meetings of the Board and prescribing a quorum; providing that a quorum shall be present at all times during any hearing conducted and requiring the Chairman or a member of the Board designated by him shall conduct all such hearings; providing for annual reports by the Board; providing that the members, Chief Engineer and employees of the Board shall receive their necessary traveling expenses while travelling on business of the Board; providing that the Attorney General shall represent the Board in all litigation to which it may be a party; providing for the employment of other legal counsel; providing that suits to enforce provisions of this Chapter may be prosecuted in the courts of this State by the Attorney General, or by any district or county attorney of the county of suit under the direction of the Attorney General at the request of the Board; providing for the appeal from any ruling, order, decision or other act of the Board, by any person affected; providing venue in all such actions be fixed in the District Court of Travis County; providing for review of any judgment or order of a district court on appeal to the Court of Civil Appeals, and by appeal or writ of error to the Supreme Court; providing that the Board may cooperate with agencies of the United States, with agencies of this State or any other States, with political subdivisions of the State and with persons; providing for the furnishing by the Board of certified copies of its proceedings, etc.; repealing Articles 7478, 7479, 7480, 7481, 7482, 7483, 7484, 7485, 7486, 7487, 7490, 7491, 7512, 7564, and 7569 of Chapter 1, Title 128 of the Revised Civil Statutes of Texas, 1925; providing that the provisions of this Act relate only to surface water; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

Section 1. That Article 7477 of Chapter 1 of Title 128 of the Revised Civil Statutes of Texas, 1925,<sup>87</sup> be and the same is hereby amended so as to hereafter read as follows:

"Article 7477.

(1) The Board of Water Engineers, created and constituted by the Acts of the Thirty-third Legislature, Chapter 171, General Laws, approved April 9, 1913, is hereby continued, and the members constituting such Board shall continue in office for the respective terms for which they were appointed, and until their successors are appointed and qualified.

87. Vernon's Ann.Civ.St. art. 7477.

Said Board shall be composed of three (3) members, one of whom shall be appointed from each of the respective Water Divisions described in Article 7475 of the Revised Civil Statutes of Texas, 1925.

"(2) The members of said Board shall be appointed by the Governor, by and with the advice and consent of the Senate, and each shall hold office for a term of six (6) years, and until his successor is appointed and qualified. No person shall be appointed a member of the Board who has not such technical knowledge and such practical experience and skill as shall fit him for the duties of the office. Each shall be a citizen of this State and an actual bona fide resident of the Water Division from which he is appointed. Each member of the Board shall qualify by taking the official oath of office prescribed by law, and by executing a bond payable to the State of Texas in the sum of Five Thousand Dollars (\$5,000) to be approved by the Governor and conditioned upon the faithful performance of his duties under the law, and for the delivery to his successor or other officer appointed by the Governor to receive same, all moneys, books, and other property belonging to the State then in his hands or under his control, or with which he may be legally chargeable as a member of the Board. The premium on such bonds shall be paid out of funds made available to the Board by the Legislature. The members of the Board shall receive such annual salaries as may be prescribed by the Legislature in Appropriation Bills passed by it.

"(3) The Governor shall designate one (1) member of said Board Chairman thereof. The Chairman shall be the Chief Administrative Officer of the Board with authority to issue notices of public hearings authorized by the Board, approve payrolls, and direct the general administration of the office of the Board. The Chairman may designate another member of the Board to act for him in his absence.

"(4) The Board shall employ a Chief Engineer to serve at the will of the Board and may delegate to him such administrative duties and functions under the Board's supervision as it may deem proper for the efficient administration of the business of the Board. The Chief Engineer shall be a Registered Professional Engineer under the laws of the State of Texas and shall have had such practical experience and have such qualifications as the Board may require.

"(5) The Chief Engineer shall receive such annual salary as may be prescribed by the Legislature in the Appropriation Bills passed by it.

"(6) The Board may appoint such other employees as may be deemed necessary for the efficient performance of the duties authorized and required of it by law.

"(7) The Board shall employ a Secretary at a salary to be fixed by the Legislature in Appropriation Bills passed by it, and who shall execute a bond in the sum of Ten Thousand Dollars (\$10,000) to be approved by the Board and payable to it. Said bond shall be conditioned upon the faithful performance of the duties of the Secretary under the law, and for the delivery to his successor or other employee designated by the Board to receive same, all moneys, books, and other property belonging to the State then in his hands or under his control, or with which he may be legally chargeable as Secretary of the Board. The premium on such bond shall be paid out of funds made available to the Board by the Legislature. The Secretary shall keep full and accurate minutes of all meetings of the Board and complete records of all its proceedings and transactions and of every ruling, order, and decision made by it. The Secretary shall be custodian of all files and records of the Board.

"(8) The Board shall hold regular meetings on dates specified by order of the Board entered upon minutes. Special meetings may be held at such times and places as said Board may deem necessary and proper in

the performance of its duties. Two (2) members of said Board shall constitute a quorum for the transaction of business at any regular or special meeting. A quorum shall be present at all times during any hearing conducted under the provisions of this Chapter, and the Chairman or a member of the Board designated by him shall conduct all such hearings.

"(9) The Board shall make biennial reports in writing to the Governor, in which shall be included statements of its activities, the data and information collected, and such suggestions as to the amendment of existing laws and the enactment of new laws as it may deem desirable. All data collected by the Board shall be the property of the State of Texas.

"(10) The members, Chief Engineer, and other employees of the Board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the Board, upon an itemized statement, sworn to by the party who incurred the expense, and approved by the Board.

"(11) The Attorney General shall be the legal advisor of the Board and shall represent it in litigation to which it may be a party; provided, that in addition, the Chairman, subject to approval of the Board and the written consent of the Attorney General of this State, may employ other legal counsel regularly, or may engage their services temporarily. Suits to enforce any provisions of this Chapter may be prosecuted in the courts of the State by the Attorney General.

"(12) Any person affected by any ruling, order, decision, or other act of the Board, may, within one hundred and twenty (120) days after the date on which such act is performed, or, in case of a ruling, order, or decision, within one hundred and twenty (120) days after the effective date thereof, file a petition in an action to review, set aside, modify, or suspend such ruling, order, decision, or other act. Or any party affected by the failure of the Board to act in a reasonable time upon an application to appropriate water, or to perform with reasonable promptness any other duty imposed by this Chapter, may file a petition in an action to compel the Board to show cause why it should not be directed by the court to take immediate action. The venue in any or all such actions is hereby fixed exclusively in the District Court of Travis County, Texas.

"(13) In all suits brought to review, modify, suspend or set aside rules and regulations, orders, decisions, or other acts of the Board, the trial shall be de novo, as that term is used and understood in an appeal from a Justice of the Peace Court to the county court. In such de novo trials, no presumption of validity or reasonableness or presumption of any character shall be indulged in favor of any such order, rule or regulation, but evidence as to the validity or reasonableness thereof shall be heard and the determination in respect thereto will be made upon facts found therein, as in other civil cases, and the procedure for such trials and the determination of the orders and judgments to be entered therein shall be governed solely by the rules of law, evidence and procedure prescribed for the courts of this State by its Constitution, Statutes and rules of procedure applicable to the trial of civil actions. It is the intent of the Legislature that such trial shall be strictly de novo and that the decision in each such case shall be made independently of any action taken by the Board, upon a preponderance of the evidence adduced at such trial and entirely free of the so-called 'substantial evidence' rule enunciated by the courts in respect to orders of other administrative or quasi-judicial agencies.

"(14) Any party aggrieved by any judgment or order of a district court in any suit or judicial proceeding brought under the provisions of this Chapter shall have the right to a review on appeal to the Court of

Civil Appeals, and by appeal or writ of error to the Supreme Court, as in other civil cases in which the district court has original jurisdiction, and subject to the Statutes and rules of practice and procedure in civil cases.

"(15) The Board in making investigations, surveys and studies, and in performing other duties prescribed by this Chapter, may cooperate with agencies of the United States, with other agencies of this State or of any other State, with political subdivisions of the State and with persons.

"(16) Upon the application of any person and upon payment of the fees prescribed therefor in the rules and regulations of the Board, the Board shall furnish certified copies of any of its proceedings or other official acts of record, or of any paper, map or document filed in the office of the Board, in connection with the appropriation of water, determination of water rights, or administration of water rights. Such certified copies under the hand of the Chairman or the Secretary, and the seal of the Board shall be admissable<sup>87a</sup> in evidence in any court or administrative proceeding, in the same manner and with like effect as the original would be."

Sec. 2. That Articles 7478, 7479, 7480, 7481, 7482, 7483, 7484, 7485, 7486, 7487, 7490, 7491, 7512, 7564 and 7569 of Chapter 1, Title 128 of the Revised Civil Statutes of Texas, 1925,<sup>88</sup> be and the same are hereby expressly repealed.

Sec. 3.<sup>89</sup> It is expressly provided that the provisions of this Act relate only to surface water and do not, and shall not, affect underground water or riparian rights.

Sec. 4. The fact that the present water laws of Texas are not adequate to meet present conditions, and the further fact that there is a present need for strengthening the administrative powers of the State Board of Water Engineers, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended and same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the House, May 14, 1953: Yeas 125, Nays 7, House concurred in Senate amendments, May 25, 1953, by a viva-voce vote; passed the Senate, as amended, May 22, 1953, by a viva-voce vote.

Approved June 8, 1953.

Effective 90 days after May 27, 1953, date of adjournment.

87a. So in enrolled bill. Probably should read "admissible."

88. Vernon's Ann.Civ.St. arts. 7478-7487, 7490, 7491, 7512, 7564, 7569.

89. Vernon's Ann.Civ.St. art. 7477a.